

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
V.)	
)	
FIDEL DOMINGUEZ PINEDA,)	
BOLIVAR PEREZ CAMACHO,)	
YOLANDA MORALES RIVERA,)	No. 3:07-CR-126
DANIEL SCHLEBEN,)	(Phillips / Shirley)
ANTHONY BILLINGSLEY,)	
JESSE GOINES,)	
MITCHELL COZART,)	
CHAD JOHNSON,)	
CHAD BURGER,)	
TOMMY DEWAYNE BURGER,)	
STEPHANIE SCHLEBEN,)	
SCOTT DUNCAN, and)	
JOE DENNIS SMITH, JR.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

All pretrial motions in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b) for disposition or report and recommendation regarding disposition by the District Court as may be appropriate. On April 17, 2008, this case came before the Court for arraignment of several defendants on the Second Superseding Indictment [Doc. 74] and hearing on Defendant Joe Dennis Smith's Motion to Extend Deadline [Doc. 126] and Motion to Continue Trial Date [Doc. 127]; along with Defendant Chad Burger's Motion to Continue [Doc. 130].

The government was represented by Assistant United States Attorney Tracee Plowell. Attorney Gregory Isaacs was present on behalf of Daniel Schleben, who was present. Attorney Jonathan Moffatt was present with his client Anthony Billingsley. Chad Johnson was present with

his counsel, Attorney Joseph Costner. Attorney Donny Young was present on behalf of Jesse Goines, who was also present. Fidel Pineda was present with his counsel, Attorney Mike Whalen. Attorney Armando Duran participated by telephone on behalf of Bolivar Camacho, who was present in the courtroom. Attorney Scott Green and his client, Yolanda Morales, were not present, having been previously excused from appearance. Attorney Mitchell Bryant appeared on behalf of Chad Burger, who was also present. Attorney Alexander Brown was present with his client, Tommy Dewayne Burger. Attorney James Varner was present with his client, Stephanie Schleben. Attorney Dennis Francis appeared on behalf of Scott Duncan, who was present. Attorney Tommy K. Hindman was present with his client, Joe Dennis Smith.

At the conclusion of the arraignments, the Court took up the requests to continue the current trial date of April 23, 2008. In support of his request, Attorney Hindman stated that there have been significant difficulties with the format used to provide discovery of recordings made of events in this case. Attorney Hindman and AUSA Plowell stated that they have been working to resolve this issue with the case agent.¹ Attorney Hindman reported, and AUSA Plowell agreed, that he has been unable to properly access the recordings in time to prepare for the trial on April 23, 2008. Attorney Hindman's client, Mr. Smith, was the last person to come before the Court in this case. For these reasons, Attorney Hindman stated that he will require a reasonable amount of time to continue his factual investigation of the charges, to access and review the discovery materials, to consult with Mr. Smith about that information and to adequately prepare for the trial, which includes twelve co-

¹ While some problems may have been attributed to the computer program used by the FBI to make or reproduce the recordings, the most significant trouble has been with recordings provided by the Tennessee Bureau of Investigation in this case, according to the description of counsel and the case agent.

defendants. Attorney Hindman withdrew his request to extend other deadlines in this matter, filed as [Doc. 126].

On behalf of Defendant Chad Burger, Attorney Bryant stated that it will be impossible for him to be present at the April 23, 2008, trial date, and a continuance is necessary in order to afford Chad Burger continuity of counsel. Attorney Bryant informed the Court that he represents a defendant in the matter of United States v. Spence, at al., an extensive federal criminal trial scheduled to begin in Chattanooga on April 22, 2008. That case is expected to last at least three days. AUSA Plowell joined in Attorney Bryant's statement and reported that the prosecutor handling that matter likewise believes that multiple defendant trial will be ready to begin as scheduled before the Honorable United States District Judge R. Allan Edgar.

Attorney Costner confirmed that Mr. Johnson did not oppose a trial continuance, as indicated at [Doc. 128]. The Court inquired of all remaining defendants and their counsel, none of whom opposed a continuance of the April 23, 2008, trial date. The United States did not oppose a continuance for the reasons set forth by Attorney Hindman and Attorney Bryant.

All parties agreed that all time between the hearing and the new trial date is properly excludable from operation of the Speedy Trial Act.

The Court finds that failure to grant a continuance in light of the fact that Attorney Bryant cannot be present would either make the proceedings impossible or constitute a miscarriage of justice within the meaning of 18 U.S.C. § 3161(h)(8)(B)(I). In addition, the present trial date of April 23, 2008, does not afford a reasonable time for Attorney Hindman to receive and review the discovery recordings, complete his factual investigation and prepare for trial in light of that information. The Court finds this to be true taking into account the exercise of due diligence by all

parties. See 18 U.S.C. § 3161(h)(8)(B)(iv).

For these reasons, the Court finds that the ends of justice served by a continuance of the April 23, 2008, trial date outweigh the best interest of the public and the defendants in a speedy trial. See 18 U.S.C. § 3161(h)(8)(A). The Court additionally finds that a reasonable period of delay as to those defendants who are joined for trial with co-defendants for whom a continuance is necessary is fully excludable under the Speedy Trial Act. 18 U.S.C. § 3161(h)(7).

Because of the number of lawyers involved in this case, the first trial date available to all parties is November 12, 2008. The Court finds that any date sooner than November 12, 2008, would unreasonably deny the defendants or the government continuity of counsel, a consideration expressly set forth by the Speedy Trial Act at 18 U.S.C. § 3161(h)(8)(B)(iv).

For these reasons, the Court finds that the time between the date of the hearing on April 17, 2008, and the new trial date of November 12, 2008, is properly excludable from the operation of the Speedy Trial Act.

For these reasons, it is **ORDERED**:

1. Mr. Smith's Motion to Extend Deadline [**Doc. 126**] is **DENIED**, having been withdrawn.
2. Mr. Smith's Motion to Continue Trial Date [**Doc. 127**]; and Chad Burger's Motion to Continue [**Doc. 130**] are **GRANTED**.
3. The trial of this case is reset to commence at **9:00 a.m. on November 12, 2008**, before the Honorable Thomas W. Phillips, United States District Judge. The parties are advised that the day preceding the trial is a legal holiday and the courthouse will be closed for Veterans Day. No other dates are scheduled at this time.

4. The Court finds that all the time between the **April 17, 2008**, hearing and the new trial date of **November 12, 2008**, is fully excludable time under the Speedy Trial Act for the reasons set forth herein. See 18 U.S.C. § 3161(h)(8)(B)(I); § 3161(h)(8)(B)(iv); and § 3161 (h)(7)

IT IS SO ORDERED.

ENTER:

s/ C. Clifford Shirley, Jr.
United States Magistrate Judge